

FREED, JAMES

12/29/2020

Page 1

14 The Deposition of JAMES FREED,  
15 Taken Via Zoom,  
16 Commencing at 12:23 p.m.,  
17 Tuesday, December 29, 2020,  
18 Before Valerie Jo Lohr, CSR-6212.

FREED, JAMES

12/29/2020

Page 2

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FREED, JAMES

12/29/2020

Page 3

1	TABLE OF CONTENTS	
2		
3 WITNESS		PAGE
4 JAMES FREED		
5		
6 EXAMINATION		
7 BY MR. ELLISON:		4
8		
9		
10		
11 EXHIBITS		
12		
13 EXHIBIT		PAGE
14 (Exhibits not offered.)		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

FREED, JAMES

12/29/2020

Page 4

1     Via Zoom,  
2     Tuesday, December 29, 2020  
3     12:23 p.m.

4

10 EXAMINATION

11 BY MR. ELLISON:

12 Q. James or Jim or Mr. Freed, which would you prefer this  
13 morning? I'm sorry, you cracked there.

14 A. James is fine.

15 Q. James, good morning. I'm attorney Philip Ellison. I  
16 represent Kevin Lindke in this lawsuit that you've been  
17 called here to testify to in your deposition.

18                    Before I start here, just to lay some ground  
19        rules, I'd just ask -- first of all, have you ever done  
20        a deposition? It sounds like you have before.

21 A. I did once the first time over a fire we had in town  
22 like, I don't know, what, a year or so ago. That was  
23 my first one. So this is my second one.

24 Q. Then consider yourself a lucky man that you've gotten  
25 this far in life without being deposed.

FREED, JAMES

12/29/2020

Page 5

1                   I'm just going to ask you a couple of  
2       questions today. Unlike most attorneys, I'm not a big  
3       fan of depositions. I try to make them as quick and as  
4       painless as possible. I'm just going to ask you some  
5       questions, you just give me the answers back. When I  
6       get all done, Mr. Shoudy might have some questions for  
7       you as well. Occasionally one of us may object to the  
8       other one's question. We just let that get the  
9       objection out. You still answer the question even  
10      though there's an objection, and then the lawyers fight  
11      later on whether or not the question was improper in  
12      any way, shape or form. The only time you would not  
13      answer a question would be if Mr. Shoudy directs you  
14      not to answer the question, and we'd get to fight about  
15      that later. But I doubt in this case we're going to  
16      have any such thing going forward.

17                  The only other question I have, are you in a  
18       position today to be able to do a deposition? You  
19       don't have any health concerns, physical or mental or  
20       emotional, that you can do the deposition freely and  
21       clearly today?

22   A.   Correct.

23   Q.   All right. Occasionally I may say just because today  
24       we've been having -- I've had computer problems, Todd's  
25       had computer problems, and still every once in a while

FREED, JAMES

12/29/2020

Page 6

1 you'll chop up. If I say is that a yes or repeating,  
2 I'm not trying to be rude. It's just we sometimes have  
3 to do that when people say uh-huh and ums and other  
4 times, because Zoom is just not as flawless as we'd  
5 like it to be yet. So it's not me trying to be rude.  
6 We've just got to make sure the record is clear for Val  
7 there.

8 MR. ELLISON: And, Val, as Mr. Freed  
9 indicated, I also talk fast. If the court reporter  
10 needs us to repeat, we work for her, to make sure the  
11 record's clear.

12 BY MR. ELLISON:

13 Q. All right. So you are James Freed, the Defendant in  
14 this case?

15 A. Yes.

16 Q. All right. And just to shortcut it, you are the city  
17 manager for the City of Port Huron, correct?

18 A. I am.

19 Q. All right. And you had a Facebook page that had the  
20 user name associated with James R. Freed1, correct?

21 A. Yes.

22 Q. All right. Do you know what the difference is from a  
23 standpoint of a user of a Facebook page versus a  
24 Facebook profile?

25 A. Yes.

FREED, JAMES

12/29/2020

Page 7

1 Q. Okay. Understanding you don't work for Facebook, can  
2 you in your own words as a user explain what you  
3 understand the difference between a Facebook page  
4 versus a Facebook profile is?

5 A. So a Facebook profile is relatively similar in that a  
6 Facebook profile has limitations on how many friends  
7 you can have, things like that.

8 Q. Okay. So as I understand Facebook profiles, you can  
9 share articles, post comments, post information, or how  
10 you're feeling, what you're doing, what you're eating.  
11 Things like that can be on a Facebook profile but can  
12 also equally be posted by the person who owns a  
13 Facebook page to be able to do the same functions,  
14 correct?

15 A. Correct.

16 Q. And as I understand it as well, you can confirm you  
17 have a Facebook page associated with James R. Freed1 as  
18 opposed to a Facebook profile?

19 A. Not quite accurate.

20 Q. Okay. Explain that to me then.

21 A. I can give you some history. So I've had a Facebook  
22 account since college. I graduated college in 2008.  
23 And so before that, before college, I worked in the  
24 private sector, and so I had around -- I had over 4,000  
25 friends, kneeing on 5,000 friends. Facebook only

FREED, JAMES

12/29/2020

Page 8

1           allows you to have 5,000 friends. So somewhere between  
2           2011 and 2013, I'd have to Google it to find out the  
3           date, when Facebook first came out, a lot of folks  
4           didn't realize it was a 5,000 friend limit. So like a  
5           business would create a business account and people  
6           would add the business as a friend, well, then they  
7           would max out at 5,000 people. Or people who had a  
8           Facebook account, you know, like photographers or  
9           something where a lot of people wanted to follow, they  
10          would max out at 5,000.

11                 So, you know, somewhere between '11 and '13,  
12          I don't know the exact date, I probably can get the  
13          year if I Googled it, Facebook allowed for a one time  
14          conversion from a Facebook account profile to a page.  
15          So one time -- you couldn't go back. You could convert  
16          your Facebook account to a Facebook page.

17          Q.        Okay.

18          A.        So that's what I did. So I took my account that I've  
19          had since college and I convert -- because I was going  
20          to cap out at 5,000 people, and I converted it to a  
21          Facebook page so that more people could follow and I  
22          could engage with more friends and family on there.

23                 So it was a Facebook private account that  
24          Facebook allowed to convert to a page since there's so  
25          many friends.

FREED, JAMES

12/29/2020

Page 9

1 Q. Okay. And were there any requirements for you to show  
2 that you had some sort of special status to warrant  
3 authorization from a Facebook account as you called it  
4 into a Facebook page? Meaning you had to be a  
5 business, you had to be a public figure, you had to  
6 be --

7 A. No, not that I remember. Anyone could do it.

8 Q. All right.

9 A. You could really just click it and it was done.

10 Q. Okay. Since that time, when did you first become city  
11 manager for the City of Port Huron?

12 A. In 2014. I think my first day was June 2nd, somewhere  
13 around there.

14 Q. And as part of that process, did you continue to use --  
15 after you became the city manager, and obviously you  
16 know the answer but bear with me, as you became city  
17 manager, you continued to use your James Freed Facebook  
18 page, correct?

19 A. Correct. Yes.

20 Q. And that's that James R. Freed1 user name designation,  
21 true?

22 A. Yes.

23 Q. Let me see if I can share a page. Hold on one second.  
24 All right. Here we go. This is what I'm looking for  
25 right here. And for purposes of identification, this

FREED, JAMES

12/29/2020

Page 10

1           is page 8 of the complaint, which is part of Paragraph  
2           28 of the complaint itself.

3                   James, can you see that screen shot on your  
4                   screen right now?

5 A. Yes, sir, I can.

6 Q. Okay. Understanding there are multiple posts obviously  
7 in the Facebook page, would this be generally speaking  
8 one type of post made to your Facebook page?

9 A. Yeah.

10 Q. Okay. So my question I want to understand is, as part  
11 of your operation of this Facebook page, we see posts  
12 like this one.

13 A. Yes.

14 Q. Which looks to me to be an announcement of city  
15 activities. Would you agree with that?

16 A. Yes. But this is not where we would announce them  
17 first.

18 Q. Okay.

19 A. If nothing was ever announced on my Facebook that  
20 wasn't readily available, either city press releases,  
21 newspaper articles, other information sources, I didn't  
22 make announcements like first time you hear it here on  
23 my Facebook page.

24 Q. Fair enough.

25 A. I would take information from other parts of the

FREED, JAMES

12/29/2020

Page 11

1                   community, sources and stuff and put it out there. But  
2                   I get what you're saying.

3   Q.   Right. So I guess what I'm trying to understand would  
4                   be is that it was part of the operation of this  
5                   Facebook page that even though it wasn't necessarily  
6                   the initial broadcast of a particular activity, it  
7                   would be a way that you as city manager would  
8                   reverberate that message out to get it to as many  
9                   people in the community as possible? Is that a fair  
10                  assessment?

11   A.   Yes.

12   Q.   Okay. As part of that, again, using this one as an  
13                  example -- and, again, understanding there are others,  
14                  but looking at this one as an example, right below  
15                  right there, and I'll just make the representation,  
16                  this is a screen shot I made of this page back when I  
17                  made the lawsuit, because you can kind of see the  
18                  picture of my family right there where it says write a  
19                  comment right below the post.

20   A.   Yeah.

21   Q.   That's me right there. Below this there's a spot on  
22                  there to write comments in response to your posts,  
23                  correct?

24   A.   I'm not sure if it's to invite comments. I wasn't able  
25                  to turn that feature off.

FREED, JAMES

12/29/2020

Page 12

1 Q. Okay.

2 A. Meaning --

3 Q. To your knowledge -- I'm sorry. Go ahead.

4 A. Meaning like other features like messaging where people  
5 can't contact me, because I don't want to be messaged.

6 But I cannot turn off the comment feature. So it's not  
7 like a choice that you can -- it allows you to comment.

8 I just -- I would take issue with the word invitation,  
9 because I didn't -- I would have turned that off. But,

10 yes --

11 Q. Fair enough. Go ahead.

12 A. Yes to your question. I get what you're asking. Can  
13 people comment on my posts? Yes.

14 Q. Okay. Let me rephrase that then in terms of to avoid  
15 the word invite. There would be the availability to  
16 comment in response to a post that was made by you  
17 about city activities such as this one about putting  
18 the fishing docks open early to help with the social  
19 distancing obligations that the state had put into  
20 place due to COVID, for example, fair?

21 A. This was more a joke about fishing and social  
22 distancing. I was making a joke. But, I mean, yeah,  
23 your assumption is correct, yes.

24 Q. All right. Did you have any prior criteria or standard  
25 that you developed in written form or customary form or

FREED, JAMES

12/29/2020

Page 13

1           on some basis that dictated what types of posts you  
2           would put onto this particular Facebook page?

3   A.   No, not at all. I've shared every -- the majority are  
4       family photos, pictures of my dog, dinner, I've shared  
5       bible verses that I found interesting, I've shared  
6       YouTube videos that I found interesting or inspiring.  
7       I mean, no, it's pretty much just whatever I found  
8       interesting. I've been doing that since college.

9   Q.   Okay.

10   A.   I treated it as anyone would their own personal  
11       Facebook, things that interested them, things that --  
12       you know.

13   Q.   Now, for example, below this particular one about the  
14       Facebook posts there, someone has responded to you by  
15       the name of Jenny Lynn. Do you know this Jenny Lynn?  
16       Is this a friend that you know of?

17   A.   I recognize the name just because she posts a lot. I  
18       don't recall ever meeting her.

19   Q.   Okay. So fair to say this is a -- we use the word  
20       friends, obviously, in the Facebook world to mean  
21       something different than the traditional phrase of  
22       friends. Would you agree with that?

23   A.   Yes.

24   Q.   Okay. A friend on Facebook is not necessarily what we  
25       would constitute as a personal friend, it's just a

FREED, JAMES

12/29/2020

Page 14

1 connection has been made, an authorized connection  
2 between two users on Facebook would be a Facebook  
3 friend, is that fair?

4 A. Well, I don't know. Because some people who share my  
5 stuff and comment don't follow my page and are a Like  
6 on my page.

7 Q. Okay. Fair enough.

8 A. A page for the public, it can be anybody.

9 Q. Okay. So looking at this one, just an example one,  
10 this Jenny Lynn asked a question about when the City  
11 would be picking up lawn and leaf bags soon, and you  
12 responded -- the answer is yes?

13 A. Yes.

14 Q. So to be fair, you were answering questions that were  
15 posed that were unrelated to the post about city  
16 questions at the time?

17 A. Yeah. Like I would with anyone, if a neighbor asked me  
18 or something like that. I knew the answer so, yes, I  
19 responded back.

20 Q. Now, as part of this lawsuit, the allegations that have  
21 been made by Mr. Lindke through my office is that you  
22 in the operation of this page have deleted Facebook  
23 comments made by certain individuals onto this  
24 particular page. And we've heard some testimony --

25 A. I've read --

FREED, JAMES

12/29/2020

Page 15

1 Q. I'm sorry?

2 A. I've read the complaint, and I don't dispute any of it.

3 Q. Okay.

4 A. To be honest -- I don't dispute any of the allegations  
5 in the complaint. This is my personal Facebook page.  
6 There was no rhyme or reason on how I -- if I didn't  
7 like a comment or if I thought it was creepy -- there's  
8 been some creepy people over the years who have made  
9 inappropriate comments about my wife and my kids or  
10 liked pictures. I get what you're alleging, and I  
11 don't dispute any of it. I treat it as my personal  
12 Facebook page. I have since college. I only converted  
13 to a page because I couldn't have more than 5,000  
14 friends. I've operated this page under the assumption  
15 that's my page. I've had it through multiple jobs  
16 before I became city manager of Port Huron. I've never  
17 accessed this page on any city device or machine. So I  
18 get the question you're asking. You know, was this my  
19 personal work -- and I think it's a fair question. I  
20 was treating this as a personal Facebook post. So I  
21 don't -- I don't -- I've read your report and your  
22 allegations that I deleted comments, that I blocked  
23 people. I don't dispute that in any way.

24 Q. Okay. Well, let me make sure to get the record clear,  
25 because this is my opportunity to talk to you on this.

FREED, JAMES

12/29/2020

Page 16

1                   We've heard some testimony from different  
2       folks who have said that comments they have posted that  
3       have criticized either the mayor or your response to  
4       deleting other people's posts or about the city's  
5       response to COVID have been deleted by you in the  
6       operation of this particular page. You don't dispute  
7       that?

8                   MR. SHOUDY: For the record -- just one  
9       second, James. Just for the record, Mr. Freed wasn't  
10      present at the earlier depositions and we don't have a  
11      transcript yet, so your question is, you know, has he  
12      heard the testimony, the answer is he hasn't. But if  
13      your question is has he deleted posts, I think he can  
14      answer that.

15                  MR. ELLISON: I was going to the latter  
16      question. I wasn't asking him -- obviously there's no  
17      transcript yet on this and he wasn't there.

18                  THE WITNESS: Yes. Yes to your question.

19      BY MR. ELLISON:

20      Q. Okay. And so at any time have you banned any  
21      particular users of Facebook from being able to comment  
22      on your Facebook page?

23      A. Very rare. During the time -- if I blocked your  
24      client, I didn't do so in comments that he -- I didn't  
25      block him based on his comments. Because I really

FREED, JAMES

12/29/2020

Page 17

1           don't recall anything he specifically wrote. I just  
2           remember one time he wrote like three weird smiley  
3           faces, and that was like the first time I saw him on my  
4           page. And to be quite honest, I was really creeped  
5           out, because I had been aware of other things in this  
6           community where he had essentially stalked people,  
7           harassed people, lots of PPOs and records. So when I  
8           block your client, I blocked him not on what he --  
9           because I can't really recall anything he posted. I  
10          blocked him specifically on who he was. And I know  
11          what he's done in the community to some school  
12          employees and other stuff, so I blocked him just on who  
13          he was. I can't recall besides the three smiley faces  
14          anything that he specifically wrote. I mean, I'm not  
15          disputing that he did. I may have deleted it. I just  
16          can't recall it. Because I've tried to ponder it.

17                 And then in the few days after, I blocked  
18          several accounts that I suspected could be him, because  
19          I was made aware that he had numerous fake accounts.  
20          So I blocked a bunch of people I thought could be him.  
21          Some probably weren't. I don't dispute that.

22 Q. All right. Fair enough.

23                 You can imagine the difficulty from my aspect  
24          of this case trying to find -- trying to establish that  
25          there were comments that were deleted. And of course

FREED, JAMES

12/29/2020

Page 18

1           as part of discovery, I asked you to produce the  
2           downloadable aspect of it. And, of course, those  
3           aren't -- you guys didn't -- they're not there.  
4           They're not there anymore.

5     A.    No. I think you and I can come to an agreement that I  
6           deleted comments I didn't like.

7     Q.    Okay.

8     A.    I deleted comments that were -- I felt -- some were  
9           just like derogatory towards me. Sometimes someone  
10          would write something stupid and I just didn't care.  
11          If anything was -- over the years if people posted  
12          about me or my family specifically or anything that's  
13          weird, I mean, I can't recall anything, but I did so  
14          under the premise that this was a private page. And if  
15          I can be somewhat candid with you, I mean, I hate  
16          getting sued. It's not fun. But it's an interesting  
17          -- from a scholarly aspect, you're asking an  
18          interesting question. You know, I get what you're  
19          going for. Was my page at some point public. I was  
20          under the presumption that it was personal.

21           There was never any city involvement in my  
22          page. I never used a city machine, a city device,  
23          anything to access the page. And so it's like I always  
24          thought it was personal. If it wasn't -- to be quite  
25          frank, if I couldn't use it as a personal page, I

FREED, JAMES

12/29/2020

Page 19

1           wouldn't have had one. You know, I don't want an  
2           official city manager page.

3   Q.   Well, let me ask you this: Looking at what's on your  
4           screen right now, this was posted on March 26 at 9:05  
5           in the morning. I mean, that would be the normal time  
6           you'd be working as the city manager for the City of  
7           Port Huron, correct?

8   A.   It depends. I mean, I'm salary exempt, so I'm on call  
9           24/7. I don't know what day that was. I don't know if  
10          I was at a meeting late that night and decided to come  
11          in later. So based on my time, sometimes I come in at  
12          7:00 in the morning, sometimes 10:00 in the morning  
13          based on my schedule. So I'm essentially salary  
14          exempt. But I'd have to go back and look at my  
15          calendar and find out where I was. I get what you're  
16          saying, normal business hours. I don't -- I don't  
17          dispute that.

18   Q.   All right. Well, let me switch to this one right quick  
19          here.

20   A.   I guess where I keep going with this, Phil, I think you  
21          and I agree on a lot here. The question is was this my  
22          personal page or not. I don't dispute much of what  
23          you're asking me.

24   Q.   And I appreciate that. I mean, that's one of the --  
25          and I will acknowledge, I'm surprised your attorney

FREED, JAMES

12/29/2020

Page 20

1 didn't have a stroke right there when you said I'm not  
2 disputing anything in your lawsuit. You're obviously  
3 not disputing any of the facts about deleting comments  
4 and stuff. Whether or not it's a First Amendment  
5 violation is something for the lawyers and the courts  
6 to sort out. Fair?

7 A. Yes. And I respect the scholarly question of -- you  
8 know, you're asking a scholarly question. At some  
9 point, am I no longer personal. You know, I mean, I  
10 don't know.

11 Q. Well, let me ask this question. This is a weird  
12 question and bear with me. But were you ever aware at  
13 any point about the litigation where Donald Trump as  
14 president had a Twitter account that was private before  
15 he became president and that the Second Circuit  
16 ultimately concluded that it became public because of  
17 his role and his activities of becoming a public  
18 official? And, again, that's my recitation --

19 A. No.

20 Q. -- of the details of that. But were you aware of that  
21 case at all?

22 MR. SHOUDY: I'm just going place --

23 THE WITNESS: I am --

24 MR. SHOUDY: Wait one second, James.

25 I'm just going to place an objection to the

FREED, JAMES

12/29/2020

Page 21

1           form and foundation of the question, because I think  
2           there are other factors in there. Obviously, you're  
3           not reciting the whole case, but I appreciate that. So  
4           try to answer it if you can.

5     BY MR. ELLISON:

6     Q.    And that's fair enough. James, I want to be clear, I  
7           guess. Are you an attorney? I didn't think you were.

8     A.    No.

9     Q.    Okay. Well, then you have a better life than the rest  
10          of us then, right? I mean, to be clear, I'm not trying  
11          to ask you if you have a legal opinion. But from your  
12          standpoint as a city manager, were you aware of the  
13          President Trump case involving his Twitter account at  
14          all?

15    A.    At the time, no. But you have afforded me an education  
16          in these months, so I've learn about some other things.  
17          I've also heard about other cases. But, no.

18    Q.    Okay.

19    A.    No. At the time, no. But as of now I've got a little  
20          education.

21    Q.    All right. Well, very good. So looking at Exhibit A  
22          to the complaint that's been filed, this is the about  
23          section of that Facebook page, okay?

24    A.    Yes.

25    Q.    And I'm looking at this. This is, I guess, what I want

FREED, JAMES

12/29/2020

Page 22

1           to give you some pushback on, your assertion that this  
2           was a private page. Because looking at the page, you  
3           have hours of -- there's an hours function, and it says  
4           always open. Now, let's just assume between the two of  
5           us right now that that's a default setting and that you  
6           didn't select that, okay?

7   A.   Okay.

8   Q.   I'm looking at the contact information section, what I  
9        have in front of you right now. And the e-mail address  
10      that's associated with this account is  
11      communitycomments@porthuron.org. You testified earlier  
12      that you did not become the city manager until 2014 and  
13      this conversion from a personal account to a Facebook  
14      page occurred in 2014. How do we --

15   A.   No. No. No. The conversion page and account was well  
16      before I ever came to the City of Port Huron.

17   Q.   Okay.

18   A.   It was done sometime between 2011 and 2013, I believe.

19   Q.   Okay.

20   A.   It could have been 2010. I'd have to go back and see.  
21      It was a page well before I became the city manager of  
22      Port Huron.

23   Q.   Fair enough.

24   A.   And after I became the city manager of Port Huron, the  
25      information I put on there was just mere convenience.

FREED, JAMES

12/29/2020

Page 23

1 I just copied and pasted my bio. I don't have a  
2 website, so I just put the city website. I wasn't  
3 thinking at the time the reasoning why. I don't have a  
4 website, so I put a website. The e-mail was created I  
5 think after I got here that we used for just general  
6 inquiry. I just threw that out there. Because people  
7 do ask how to get ahold of you. But in hindsight, I  
8 wouldn't have put it on there.

9 Q. Okay. But from a public perspective looking at a  
10 Facebook page trying to find the city manager and they  
11 look at the about page here, I mean, we've got where  
12 there's an official City of Port Huron e-mail address,  
13 a link to the City of Port Huron website, and if we  
14 scroll down a little bit further, it also identifies  
15 you right here as a public figure as well.

16 A. Well, I do remember when I had to -- when you had to  
17 pick like are you a business, are you a person, they  
18 gave me the option between public figure and public  
19 official. And I'm not a public official, because I  
20 don't hold office. With a public official you have to  
21 put your office you hold, what government you work for,  
22 all that. And I never -- I chose -- I purposely chose  
23 not the public official. So the other one is a public  
24 figure which they classify anybody who is well-known in  
25 the area. Celebrities do that. You know,

FREED, JAMES

12/29/2020

Page 24

1           photographers do that. So that's why I picked public  
2           figure and not public official. Because public  
3           official was an option, what position you hold, what  
4           government and all that. So I didn't do that. Public  
5           figure was like the last one left.

6   Q.   All right.

7   A.   I wish I had a better answer.

8   Q.   No. No. No. I mean, that's fair enough. And I do  
9           appreciate you acknowledging the scholarly question on  
10          this, because it does present I think a unique  
11          (inaudible). That's my viewpoint it does at least.

12   A.   Yes.

13   Q.   It certainly makes Mr. Shoudy and I have a fun time in  
14          court trying to spar about legal issues. But I guess  
15          with you acknowledging about deleting, you know,  
16          comments and users and your perspective why, that  
17          answers the majority of my questions today.

18   A.   Yes. The question --

19   Q.   Go ahead.

20                    MR. SHOUDY: Hey, James, wait for a question.

21                    THE WITNESS: Okay.

22                    MR. SHOUDY: Wait for a question. I know  
23          you're getting ahead of him a little bit and it's  
24          helping this thing go quicker, but let's just wait for  
25          a question, okay?

FREED, JAMES

12/29/2020

Page 25

1 THE WITNESS: Okay. Sorry about that.

2 BY MR. ELLISON:

3 Q. That's all right. As you can see, I don't take a very  
4 hard mean lawyer approach. I take a more friendly  
5 folksy approach with my litigation, and sometimes that  
6 gets both of us in trouble.

7 But anyway, two other questions I have with  
8 this is, one is that currently I've gone online to try  
9 to locate this page again, and I can't find it on  
10 Facebook anymore. What's happened to it?

11 A. So my -- so it is not uncommon that throughout the  
12 entire time I've had the page I will un-publish it for  
13 days, weeks or months. Like, sometimes you'll say I'm  
14 done with social media. I take a break from social  
15 medial all together. However, I think it was March or  
16 April, Facebook disabled my account. No explanation  
17 why, no communication, nothing. I essentially went  
18 through their process where I had to actually scan a  
19 photo of my driver's license and send it to Facebook.  
20 They reactivated it. So it was available for -- it was  
21 somewhere like in June I got back activated. But  
22 quickly thereafter, it was disabled again without any  
23 reasoning. I can assume that a bunch of people with  
24 accounts had to go report -- from my own Google, from  
25 researching, if a bunch of people report you, they'll

FREED, JAMES

12/29/2020

Page 26

1 disable your account and they make you go through the  
2 process. I have no idea. It was disabled for months.  
3 I mean, I didn't have access to it. I couldn't even  
4 log in all the way up until I think it was sometime in  
5 October I tried to log in and it let me in. The page  
6 is un-published because -- I think you asked the  
7 question is this a public page or private. I assumed  
8 it was a private page. If it is not going to be a  
9 private page, I don't want it. I don't want to have --  
10 I wouldn't put photos of my family out there. I  
11 wouldn't put photos of my kid out there if I didn't  
12 have the ability to control it like a personal page.  
13 So it is un-published. Nobody can find it.

14 Q. Okay. Just to be clear, you do have access and control  
15 over that account currently? For example, if the judge  
16 wanted to view this page, you would have the ability to  
17 I think the word you used is publish it, basically  
18 reactivate it publically and it could be seen again at  
19 your direction and command, correct?

20 A. I believe so. But do note that whatever does get  
21 published and -- you know, I don't know what's going  
22 on.

23 Q. Okay. You can't --

24 A. I think --

25 Q. Go ahead.

FREED, JAMES

12/29/2020

Page 27

1 A. I would never have a page like this -- I don't want a  
2 -- you know what I mean? Like, I was under the  
3 presumption it was a personal page. So until that  
4 question is answered, it's un-published. But yes to  
5 your question.

6 Q. Okay. Fair enough. And do you happen to know -- and  
7 I'm going to use the word friends, Facebook friends or  
8 Facebook connections you have associated with this  
9 particular Facebook page.

10 A. I think there's north of like 5,500 people who like it.  
11 And then I think -- I don't know how Facebook --  
12 there's a difference between likes and followers, and I  
13 don't know if they overlap. There's also a follow  
14 component to it, and I think that's a couple thousand.  
15 But I don't know -- if a like is considered a follow, I  
16 don't know if it's the same thing.

17 Q. Okay. And these people that you've identified, these,  
18 you know, whatever number of thousands of people, are  
19 these people all that you know, or are these people  
20 that have --

21 A. The vast -- the overwhelming vast majority are people I  
22 know, people I've worked with, family and friends. I  
23 speak a lot across the country. I've spoken to a civic  
24 group or I've spoken to an association and follow me, I  
25 mean, so yeah. Well beyond the scopes of the City of

FREED, JAMES

12/29/2020

Page 28

1 Port Huron.

2 Q. Do you know of the number of followers or for lack of a  
3 better work likers who are following you who are simply  
4 constituents of the City of Port Huron?

5 A. No. No idea.

6 Q. All right. Based on your experience operating this  
7 Facebook page, would you acknowledge that there are  
8 constituents and members of the public that are in fact  
9 interacting with your Facebook page until it was shut  
10 down, obviously?

11 A. Yes. And you know, I've been stopped at the grocery  
12 store and people are like, I love seeing the pictures  
13 of your family and your kids. I mean, it was almost  
14 like they were my -- I couldn't have a Facebook account  
15 for friends because I had too many. That's the only  
16 reason why it's a page and not an account.

17 Q. All right. Okay.

18 A. Yes to your question.

19 Q. You've done a nice job, and I appreciate it. The one  
20 last set of questions I have is, and this is a bit  
21 weird in terms of the question I have to ask in terms  
22 of the format, but before you banned any particular  
23 user from commenting or being able to post statements  
24 onto your Facebook page in whatever fashion and status  
25 it was, did you ever give anybody the opportunity to --

FREED, JAMES

12/29/2020

Page 29

1 give them notice and the opportunity to say you  
2 shouldn't do that?

3 A. No. I had -- I had no standards or methodology. I  
4 didn't -- no. No.

5 Q. Let me ask it this way, and if you don't know, it's  
6 perfectly all right to say you don't know. But as a  
7 public official, are you aware that there's an  
8 obligation under the US Constitution for certain types  
9 of things that need to have what are called procedural  
10 due process? Is that something you're familiar with?

11 A. Yes, I am. But, again, I believed the page was under  
12 my personal account. But, yes.

13 Q. Fair enough. Fair enough. And I understand that, and  
14 I get it. But my question I want to ask just to  
15 establish for the record here is did you provide any  
16 procedural pre-deprivation or post-deprivation notice  
17 and the opportunity to be heard to any user before they  
18 were suspended or banned from being able to comment on  
19 this Facebook page?

20 A. No.

21 Q. Okay. Same question but as to comments that have been  
22 placed. Did you give any pre- or post-deprivation  
23 notice to the commenter that the comment was going to  
24 be deleted or was deleted and could possibly be  
25 restored and gave them the chance to have an

FREED, JAMES

12/29/2020

Page 30

1 opportunity to be heard, to make an argument to you  
2 before you did that?

3 A. No.

4 Q. All right. And that's why I said it's a bit awkward of  
5 a question, because it's got a lot of legalese tied up  
6 with it as well.

7 MR. ELLISON: Other than that, I have no  
8 further questions for you. I know you were on  
9 vacation. I appreciate you coming in during your  
10 vacation to speak with me. I promised Todd this  
11 wouldn't last more than an hour, and I think I kept my  
12 word here today. So I have no further questions. Todd  
13 might have a couple questions for you. And if he does,  
14 I may have a couple of follow-ups. But other than  
15 that, that takes care of my time I needed with you  
16 today, and I appreciate it.

17 MR. SHOUDY: All right. Well, thank you. I  
18 have no questions.

19 (The deposition was concluded at 12:58 p.m.  
20 Signature of the witness was not requested by  
21 counsel for the respective parties hereto.)  
22  
23  
24  
25

FREED, JAMES

12/29/2020

Page 31

1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN )

3 ) SS

4 COUNTY OF ST. CLAIR )

5

6 I, Valerie Jo Lohr, C.S.R., certify that this  
7 deposition was taken before me on the date hereinbefore  
8 set forth; that the foregoing questions and answers  
9 were recorded by me stenographically and reduced to  
10 computer transcription; that this is a true, full and  
11 correct transcript of my stenographic notes so taken;  
12 and that I am not related to, nor of counsel to, either  
13 party nor interested in the event of this cause.

14

15

16

17

18

19

20

21

  
Valerie Jo Lohr

22 VALERIE JO LOHR, CSR-6212

23 Notary Public,

24 St. Clair County, Michigan

25 My commission expires: May 23, 2027

FREED, JAMES

12/29/2020

Index: 10:00..clear

<p><b>1</b></p> <p><b>10:00</b> 19:12</p> <p><b>11</b> 8:11</p> <p><b>12:23</b> 4:3</p> <p><b>12:58</b> 30:19</p> <p><b>13</b> 8:11</p> <hr/> <p><b>2</b></p> <p><b>2008</b> 7:22</p> <p><b>2010</b> 22:20</p> <p><b>2011</b> 8:2 22:18</p> <p><b>2013</b> 8:2 22:18</p> <p><b>2014</b> 9:12 22:12, 14</p> <p><b>2020</b> 4:2</p> <p><b>24/7</b> 19:9</p> <p><b>26</b> 19:4</p> <p><b>28</b> 10:2</p> <p><b>29</b> 4:2</p> <p><b>2nd</b> 9:12</p> <hr/> <p><b>4</b></p> <p><b>4,000</b> 7:24</p> <hr/> <p><b>5</b></p> <p><b>5,000</b> 7:25 8:1,4, 7,10,20 15:13</p> <p><b>5,500</b> 27:10</p> <hr/> <p><b>7</b></p> <p><b>7:00</b> 19:12</p>	<p><b>8</b></p> <p><b>8</b> 10:1</p> <hr/> <p><b>9</b></p> <p><b>9:05</b> 19:4</p> <hr/> <p><b>A</b></p> <p><b>ability</b> 26:12,16</p> <p><b>access</b> 18:23 26:3,14</p> <p><b>accessed</b> 15:17</p> <p><b>account</b> 7:22 8:5,8,14,16,18,23 9:3 20:14 21:13 22:10,13,15 25:16 26:1,15 28:14,16 29:12</p> <p><b>accounts</b> 17:18,19 25:24</p> <p><b>accurate</b> 7:19</p> <p><b>acknowledge</b> 19:25 28:7</p> <p><b>acknowledgi</b> <b>ng</b> 24:9,15</p> <p><b>activated</b> 25:21</p> <p><b>activities</b> 10:15 12:17 20:17</p> <p><b>activity</b> 11:6</p> <p><b>add</b> 8:6</p> <p><b>address</b> 22:9 23:12</p> <p><b>afforded</b> 21:15</p> <p><b>agree</b> 10:15 13:22 19:21</p> <p><b>agreement</b> 18:5</p>	<p><b>ahead</b> 12:3,11 24:19,23 26:25</p> <p><b>ahold</b> 23:7</p> <p><b>allegations</b> 14:20 15:4,22</p> <p><b>alleging</b> 15:10</p> <p><b>allowed</b> 8:13, 24</p> <p><b>Amendment</b> 20:4</p> <p><b>announce</b> 10:16</p> <p><b>announced</b> 10:19</p> <p><b>announceme</b> <b>nt</b> 10:14</p> <p><b>announceme</b> <b>nts</b> 10:22</p> <p><b>answering</b> 14:14</p> <p><b>answers</b> 5:5 24:17</p> <p><b>anymore</b> 18:4 25:10</p> <p><b>approach</b> 25:4,5</p> <p><b>April</b> 25:16</p> <p><b>area</b> 23:25</p> <p><b>argument</b> 30:1</p> <p><b>articles</b> 7:9 10:21</p> <p><b>aspect</b> 17:23 18:2,17</p> <p><b>assertion</b> 22:1</p> <p><b>assessment</b> 11:10</p> <p><b>association</b> 27:24</p> <p><b>assume</b> 22:4 25:23</p> <p><b>assumed</b> 26:7</p>	<p><b>assumption</b> 12:23 15:14</p> <p><b>attorney</b> 4:15 19:25 21:7</p> <p><b>attorneys</b> 5:2</p> <p><b>authorization</b> 9:3</p> <p><b>authorized</b> 14:1</p> <p><b>availability</b> 12:15</p> <p><b>avoid</b> 12:14</p> <p><b>aware</b> 17:5,19 20:12,20 21:12 29:7</p> <p><b>awkward</b> 30:4</p> <hr/> <p><b>B</b></p> <p><b>back</b> 5:5 8:15 11:16 14:19 19:14 22:20 25:21</p> <p><b>bags</b> 14:11</p> <p><b>banned</b> 16:20 28:22 29:18</p> <p><b>based</b> 16:25 19:11,13 28:6</p> <p><b>basically</b> 26:17</p> <p><b>basis</b> 13:1</p> <p><b>bear</b> 9:16 20:12</p> <p><b>believed</b> 29:11</p> <p><b>bible</b> 13:5</p> <p><b>big</b> 5:2</p> <p><b>bio</b> 23:1</p> <p><b>bit</b> 23:14 24:23 28:20 30:4</p> <p><b>block</b> 16:25 17:8</p> <p><b>blocked</b> 15:22 16:23 17:8,10,12, 17,20</p>	<p><b>break</b> 25:14</p> <p><b>broadcast</b> 11:6</p> <p><b>bunch</b> 17:20 25:23,25</p> <p><b>business</b> 8:5,6 9:5 19:16 23:17</p> <hr/> <p><b>C</b></p> <p><b>calendar</b> 19:15</p> <p><b>call</b> 19:8</p> <p><b>called</b> 4:6,17 9:3 29:9</p> <p><b>candid</b> 18:15</p> <p><b>cap</b> 8:20</p> <p><b>care</b> 18:10 30:15</p> <p><b>case</b> 5:15 6:14 17:24 20:21 21:3, 13</p> <p><b>cases</b> 21:17</p> <p><b>Celebrities</b> 23:25</p> <p><b>chance</b> 29:25</p> <p><b>choice</b> 12:7</p> <p><b>chop</b> 6:1</p> <p><b>chose</b> 23:22</p> <p><b>Circuit</b> 20:15</p> <p><b>city</b> 6:16,17 9:10,11,15,16 10:14,20 11:7 12:17 14:10,15 15:16,17 18:21, 22 19:2,6 21:12 22:12,16,21,24 23:2,10,12,13 27:25 28:4</p> <p><b>city's</b> 16:4</p> <p><b>civic</b> 27:23</p> <p><b>classify</b> 23:24</p> <p><b>clear</b> 6:6,11 15:24 21:6,10 26:14</p>
---	--	---	---	---

FREED, JAMES

12/29/2020

Index: click..fair

<b>click</b> 9:9	<b>considered</b> 27:15	<b>criteria</b> 12:24	<b>dinner</b> 13:4	<b>employees</b> 17:12
<b>client</b> 16:24 17:8	<b>constituents</b> 28:4,8	<b>criticized</b> 16:3	<b>direction</b> 26:19	<b>engage</b> 8:22
<b>college</b> 7:22,23 8:19 13:8 15:12	<b>constitute</b> 13:25	<b>customary</b> 12:25	<b>directs</b> 5:13	<b>entire</b> 25:12
<b>command</b> 26:19	<b>Constitution</b> 29:8		<b>disable</b> 26:1	<b>equally</b> 7:12
<b>comment</b> 11:19 12:6,7,13, 16 14:5 15:7 16:21 29:18,23	<b>contact</b> 12:5 22:8	<b>D</b>	<b>disabled</b> 25:16,22 26:2	<b>essentially</b> 17:6 19:13 25:17
<b>commenter</b> 29:23	<b>continue</b> 9:14	<b>date</b> 8:3,12	<b>discovery</b> 18:1	<b>establish</b> 17:24 29:15
<b>commenting</b> 28:23	<b>continued</b> 9:17	<b>day</b> 9:12 19:9	<b>dispute</b> 15:2,4, 11,23 16:6 17:21 19:17,22	<b>exact</b> 8:12
<b>comments</b> 7:9 11:22,24 14:23 15:9,22 16:2,24, 25 17:25 18:6,8 20:3 24:16 29:21	<b>control</b> 26:12, 14	<b>days</b> 17:17 25:13	<b>disputing</b> 17:15 20:2,3	<b>EXAMINATIO</b> <b>N</b> 4:10
<b>communicati</b> <b>on</b> 25:17	<b>convenience</b> 22:25	<b>December</b> 4:2	<b>distancing</b> 12:19,22	<b>exempt</b> 19:8,14
<b>community</b> 11:1,9 17:6,11	<b>conversion</b> 8:14 22:13,15	<b>decided</b> 19:10	<b>docks</b> 12:18	<b>Exhibit</b> 21:21
<b>communityco</b> <b>mments@</b> <b>porthuron.</b> <b>org.</b> 22:11	<b>convert</b> 8:15, 19,24	<b>default</b> 22:5	<b>dog</b> 13:4	<b>experience</b> 28:6
<b>complaint</b> 10:1,2 15:2,5 21:22	<b>converted</b> 8:20 15:12	<b>Defendant</b> 6:13	<b>Donald</b> 20:13	<b>explain</b> 7:2,20
<b>component</b> 27:14	<b>copied</b> 23:1	<b>deleted</b> 14:22 15:22 16:5,13 17:15,25 18:6,8 29:24	<b>doubt</b> 5:15	<b>explanation</b> 25:16
<b>computer</b> 5:24,25	<b>correct</b> 5:22 6:17,20 7:14,15 9:18,19 11:23 12:23 19:7 26:19	<b>deleting</b> 16:4 20:3 24:15	<b>downloadabl</b> e 18:2	
<b>concerns</b> 5:19	<b>counsel</b> 30:21	<b>depends</b> 19:8	<b>driver's</b> 25:19	<b>F</b>
<b>concluded</b> 20:16 30:19	<b>country</b> 27:23	<b>deposed</b> 4:25	<b>due</b> 12:20 29:10	<b>Facebook</b> 6:19,23,24 7:1,3, 4,5,6,8,11,13,17, 18,21,25 8:3,8, 13,14,16,21,23, 24 9:3,4,17 10:7, 8,11,19,23 11:5 13:2,11,14,20,24
<b>confirm</b> 7:16	<b>couple</b> 5:1 27:14 30:13,14	<b>deposition</b> 4:17,20 5:18,20 30:19	<b>duly</b> 4:7	14:2,22 15:5,12, 20 16:21,22 21:23 22:13 23:10 25:10,16, 19 27:7,8,9,11 28:7,9,14,24 29:19
<b>connection</b> 14:1	<b>court</b> 6:9 24:14	<b>depositions</b> 5:3 16:10		<b>faces</b> 17:3,13
<b>connections</b> 27:8	<b>courts</b> 20:5	<b>derogatory</b> 18:9	<b>e-mail</b> 22:9 23:4,12	<b>fact</b> 28:8
	<b>COVID</b> 12:20 16:5	<b>designation</b> 9:20	<b>earlier</b> 16:10 22:11	<b>factors</b> 21:2
	<b>cracked</b> 4:13	<b>details</b> 20:20	<b>early</b> 12:18	<b>facts</b> 20:3
	<b>create</b> 8:5	<b>developed</b> 12:25	<b>eating</b> 7:10	<b>fair</b> 10:24 11:9 12:11,20 13:19 14:3,7,14 15:19 17:22 20:6 21:6
	<b>created</b> 23:4	<b>device</b> 15:17 18:22	<b>education</b> 21:15,20	
	<b>creeped</b> 17:4	<b>dictated</b> 13:1	<b>Ellison</b> 4:11,15 6:8,12 16:15,19 21:5 25:2 30:7	
	<b>creepy</b> 15:7,8	<b>difference</b> 6:22 7:3 27:12	<b>emotional</b> 5:20	
		<b>difficulty</b> 17:23		

FREED, JAMES

12/29/2020

Index: fake..likers

22:23 24:8 27:6 29:13	<b>found</b> 13:5,6,7	<b>group</b> 27:24	<b>identified</b> 27:17	<b>Jim</b> 4:12
<b>fake</b> 17:19	<b>foundation</b> 21:1	<b>guess</b> 11:3 19:20 21:7,25 24:14	<b>identifies</b> 23:14	<b>job</b> 28:19
<b>familiar</b> 29:10	<b>frank</b> 18:25	<b>guys</b> 18:3	<b>imagine</b> 17:23	<b>jobs</b> 15:15
<b>family</b> 8:22 11:18 13:4 18:12 26:10 27:22 28:13	<b>Freed</b> 4:5,12 6:8,13 9:17 16:9		<b>improper</b> 5:11	<b>joke</b> 12:21,22
<b>fan</b> 5:3	<b>Freed1</b> 6:20 7:17 9:20		<b>inappropriate</b> 15:9	<b>judge</b> 26:15
<b>fashion</b> 28:24	<b>freely</b> 5:20		<b>inaudible</b> 24:11	<b>June</b> 9:12 25:21
<b>fast</b> 6:9	<b>friend</b> 8:4,6 13:16,24,25 14:3		<b>individuals</b> 14:23	
<b>feature</b> 11:25 12:6	<b>friendly</b> 25:4		<b>information</b> 7:9 10:21,25 22:8,25	<b>K</b>
<b>features</b> 12:4	<b>friends</b> 7:6,25 8:1,22,25 13:20, 22 15:14 27:7,22 28:15		<b>initial</b> 11:6	<b>Kevin</b> 4:16
<b>feeling</b> 7:10	<b>front</b> 22:9		<b>inquiry</b> 23:6	<b>kid</b> 26:11
<b>felt</b> 18:8	<b>fun</b> 18:16 24:13		<b>inspiring</b> 13:6	<b>kids</b> 15:9 28:13
<b>fight</b> 5:10,14	<b>function</b> 22:3		<b>interacting</b> 28:9	<b>kind</b> 11:17
<b>figure</b> 9:5 23:15,18,24 24:2, 5	<b>functions</b> 7:13		<b>interested</b> 13:11	<b>kneeling</b> 7:25
<b>filed</b> 21:22			<b>hereto</b> 30:21	<b>knew</b> 14:18
<b>find</b> 8:2 17:24 19:15 23:10 25:9 26:13			<b>interesting</b> 13:5,6,8 18:16,18	<b>knowledge</b> 12:3
<b>fine</b> 4:14	<b>G</b>			
<b>fire</b> 4:21	<b>gave</b> 23:18 29:25		<b>invitation</b> 12:8	<b>L</b>
<b>fishing</b> 12:18, 21	<b>general</b> 23:5		<b>invite</b> 11:24 12:15	<b>lack</b> 28:2
<b>flawless</b> 6:4	<b>generally</b> 10:7		<b>involvement</b> 18:21	<b>late</b> 19:10
<b>folks</b> 8:3 16:2	<b>get all</b> 5:6		<b>involving</b> 21:13	<b>lawn</b> 14:11
<b>folksy</b> 25:5	<b>give</b> 5:5 7:21 22:1 28:25 29:1, 22		<b>issue</b> 12:8	<b>lawsuit</b> 4:16 11:17 14:20 20:2
<b>follow</b> 8:9,21 14:5 27:13,15,24	<b>good</b> 4:15 21:21		<b>issues</b> 24:14	<b>lawyer</b> 25:4
<b>follow-ups</b> 30:14	<b>Google</b> 8:2 25:24			<b>lawyers</b> 5:10 20:5
<b>followers</b> 27:12 28:2	<b>Googled</b> 8:13			<b>lay</b> 4:18
<b>form</b> 5:12 12:25 21:1	<b>government</b> 23:21 24:4			<b>leaf</b> 14:11
<b>format</b> 28:22	<b>graduated</b> 7:22			<b>learn</b> 21:16
<b>forward</b> 5:16	<b>grocery</b> 28:11			<b>left</b> 24:5
	<b>ground</b> 4:18			<b>legal</b> 21:11 24:14
				<b>legalese</b> 30:5
				<b>license</b> 25:19
				<b>life</b> 4:25 21:9
				<b>likers</b> 28:3

FREED, JAMES

12/29/2020

Index: likes..present

<b>likes</b> 27:12	<b>max</b> 8:7,10	<b>number</b> 27:18 28:2	<b>overwhelmin</b>	<b>physical</b> 5:19	
<b>limit</b> 8:4	<b>mayor</b> 16:3	<b>numerous</b>	<b>g</b> 27:21	<b>pick</b> 23:17	
<b>limitations</b> 7:6	<b>Meaning</b> 9:4 12:2,4	17:19	<b>owns</b> 7:12	<b>picked</b> 24:1	
<b>Lindke</b> 4:16 14:21	<b>media</b> 25:14	<hr/>	<b>P</b>	<b>picking</b> 14:11	
<b>link</b> 23:13	<b>medial</b> 25:15	<b>O</b>		<b>picture</b> 11:18	
<b>litigation</b> 20:13 25:5	<b>meeting</b> 13:18 19:10	<b>object</b> 5:7	<b>p.m.</b> 4:3 30:19	<b>pictures</b> 13:4 15:10 28:12	
<b>locate</b> 25:9	<b>members</b> 28:8	<b>objection</b> 5:9, 10 20:25	<b>painless</b> 5:4	<b>place</b> 12:20 20:22,25	
<b>log</b> 26:4,5	<b>mental</b> 5:19	<b>obligation</b>	<b>Paragraph</b> 10:1	<b>point</b> 18:19 20:9,13	
<b>longer</b> 20:9	<b>mere</b> 22:25	29:8	<b>part</b> 9:14 10:1, 10 11:4,12 14:20 18:1	<b>ponder</b> 17:16	
<b>lot</b> 8:3,9 13:17 19:21 27:23 30:5	<b>message</b> 11:8	<b>obligations</b>	<b>parties</b> 30:21	<b>Port</b> 6:17 9:11 15:16 19:7 22:16, 22,24 23:12,13 28:1,4	
<b>lots</b> 17:7	<b>messaged</b>	12:19	<b>parts</b> 10:25	<b>posed</b> 14:15	
<b>love</b> 28:12	12:5	<b>Occasionally</b>	<b>pasted</b> 23:1	<b>position</b> 5:18 24:3	
<b>lucky</b> 4:24	<b>messaging</b>	5:7,23	<b>people</b> 6:3 8:5, 7,9,20,21 11:9 12:4,13 14:4	<b>possibly</b> 29:24	
<b>Lynn</b> 13:15 14:10	<b>methodology</b>	12:14	15:8,23 17:6,7,20 18:11 23:6 25:23, 25 27:10,17,18, 19,21,22 28:12	<b>post</b> 7:9 10:8 11:19 12:16 14:15 15:20 28:23	
<hr/>					
<b>M</b>					
<b>machine</b> 15:17 18:22	<b>months</b> 21:16 25:13 26:2	<b>October</b> 26:5	<b>people's</b> 16:4	<b>post-</b> <b>deprivation</b>	
<b>made</b> 10:8 11:16,17 12:16 14:1,21,23 15:8 17:19	<b>morning</b> 4:13, 15 19:5,12	<b>office</b> 14:21 23:20,21	<b>perfectly</b> 29:6	29:16,22	
<b>majority</b> 13:3 24:17 27:21	<b>multiple</b> 10:6 15:15	<b>official</b> 19:2 20:18 23:12,19, 20,23 24:2,3 29:7	<b>person</b> 7:12 23:17	<b>posted</b> 7:12 16:2 17:9 18:11 19:4	
<b>make</b> 5:3 6:6,10 10:22 11:15 15:24 26:1 30:1	<hr/>				
<b>makes</b> 24:13	<b>N</b>				
<b>making</b> 12:22	<b>necessarily</b>	<b>operated</b>	<b>personal</b>	<b>posts</b> 10:6,11 11:22 12:13 13:1, 14,17 16:4,13	
<b>man</b> 4:24	11:5 13:24	15:14	13:10,25 15:5,11, 19,20 18:20,24, 25 19:22 20:9	<b>PPOS</b> 17:7	
<b>manager</b> 6:17 9:11,15,17 11:7 15:16 19:2,6 21:12 22:12,21, 24 23:10	<b>needed</b> 30:15	<b>operation</b>	22:13 26:12 27:3 29:12	<b>pre-</b> 29:22	
<b>March</b> 19:4 25:15	<b>neighbor</b>	<b>opinion</b> 21:11	<b>perspective</b>	<b>pre-</b> <b>deprivation</b>	
	14:17	<b>opportunity</b>	23:9 24:16	29:16	
	<b>newspaper</b>	15:25 28:25 29:1, 17 30:1	<b>Phil</b> 19:20	<b>prefer</b> 4:12	
	10:21	<b>opposed</b> 7:18	<b>Philip</b> 4:15	<b>premise</b> 18:14	
	<b>nice</b> 28:19	<b>option</b> 23:18 24:3	<b>photo</b> 25:19	<b>present</b> 16:10 24:10	
	<b>night</b> 19:10	<b>overlap</b> 27:13	<b>photographer</b>		
	<b>normal</b> 19:5,16		<b>s</b> 8:8 24:1		
	<b>north</b> 27:10		<b>photos</b> 13:4 26:10,11		
	<b>note</b> 26:20		<b>phrase</b> 13:21		
	<b>notice</b> 29:1,16, 23				

FREED, JAMES

12/29/2020

Index: president..suspended

<b>president</b>		<b>record</b>		<b>S</b>
20:14,15 21:13		6:6 15:24 16:8,9 29:15		25:14
<b>press</b>	<b>Q</b>	<b>record's</b>		<b>sort</b>
10:20		6:11		9:2 20:6
<b>presumption</b>		<b>records</b>		<b>sounds</b>
18:20 27:3		17:7		4:20
<b>pretty</b>		<b>releases</b>	10:20	<b>sources</b>
13:7				10:21
<b>prior</b>		<b>remember</b>	9:7	11:1
12:24		17:2 23:16		<b>spar</b>
<b>private</b>		<b>repeat</b>	6:10	24:14
7:24				<b>speak</b>
8:23 18:14 20:14		<b>repeating</b>	6:1	27:23
22:2 26:7,8,9				30:10
<b>problems</b>		<b>rephrase</b>	12:14	<b>speaking</b>
5:24,25				10:7
<b>procedural</b>		<b>report</b>	15:21	<b>special</b>
29:9,16		25:24,25		9:2
<b>process</b>		<b>reporter</b>	6:9	<b>specifically</b>
9:14				17:1,10,14 18:12
25:18 26:2 29:10		<b>represent</b>	4:16	<b>spoken</b>
<b>produce</b>				27:23,
18:1		<b>representatio</b>		24
<b>profile</b>		n	11:15	<b>spot</b>
6:24 7:4,		<b>requested</b>	30:20	11:21
5,6,11,18 8:14				<b>stalked</b>
<b>profiles</b>	<b>R</b>	<b>requirements</b>	9:1	17:6
7:8				<b>standard</b>
<b>promised</b>		<b>researching</b>	25:25	12:24
30:10				<b>standards</b>
<b>provide</b>		<b>respect</b>	20:7	29:3
29:15				<b>standpoint</b>
<b>public</b>		<b>respective</b>	30:21	6:23 21:12
9:5 14:8				<b>start</b>
18:19 20:16,17		<b>responded</b>	13:14 14:12,19	4:18
23:9,15,18,19,20,				<b>state</b>
23 24:1,2,4 26:7		<b>response</b>	11:22 12:16 16:3,	12:19
28:8 29:7			5	<b>statements</b>
<b>publicly</b>		<b>rest</b>	21:9	28:23
26:18				<b>status</b>
<b>publish</b>		<b>restored</b>	29:25	9:2
26:17				28:24
<b>published</b>		<b>reverberate</b>		<b>stopped</b>
26:21				28:11
<b>purposely</b>		<b>rhyme</b>	15:6	<b>store</b>
23:22				28:12
<b>purposes</b>		<b>role</b>	20:17	<b>stroke</b>
9:25				20:1
<b>pushback</b>		<b>rude</b>	6:2,5	<b>stuff</b>
22:1				11:1 14:5
<b>put</b>		<b>rules</b>	4:19	17:12 20:4
11:1 12:19				<b>stupid</b>
13:2 22:25 23:2,				18:10
4,8,21 26:10,11				<b>sued</b>
<b>putting</b>				18:16
12:17				<b>surprised</b>
				19:25
				<b>suspected</b>
				17:18
				<b>suspended</b>
				29:18

FREED, JAMES

12/29/2020

Index: switch..Zoom

<b>switch</b> 19:18	<b>traditional</b> 13:21	<b>user</b> 6:20,23 7:2 9:20 28:23 29:17	27:22
<b>sworn</b> 4:7	<b>transcript</b> 16:11,17	<b>users</b> 14:2 16:21 24:16	<b>working</b> 19:6
<b>T</b>	<b>treat</b> 15:11	<b>V</b>	<b>world</b> 13:20
<b>takes</b> 30:15	<b>treated</b> 13:10	<b>vacation</b> 30:9, 10	<b>write</b> 11:18,22 18:10
<b>talk</b> 6:9 15:25	<b>treating</b> 15:20	<b>Val</b> 6:6,8	<b>written</b> 12:25
<b>terms</b> 12:14 28:21	<b>trouble</b> 25:6	<b>vast</b> 27:21	<b>wrote</b> 17:1,2,14
<b>testified</b> 4:9 22:11	<b>true</b> 9:21	<b>verses</b> 13:5	<b>Y</b>
<b>testify</b> 4:7,17	<b>Trump</b> 20:13 21:13	<b>versus</b> 6:23 7:4	<b>year</b> 4:22 8:13
<b>testimony</b> 14:24 16:1,12	<b>truth</b> 4:8,9	<b>videos</b> 13:6	<b>years</b> 15:8 18:11
<b>thing</b> 5:16 24:24 27:16	<b>Tuesday</b> 4:2	<b>view</b> 26:16	<b>Youtube</b> 13:6
<b>things</b> 7:7,11 13:11 17:5 21:16 29:9	<b>turn</b> 11:25 12:6	<b>viewpoint</b> 24:11	<b>Z</b>
<b>thinking</b> 23:3	<b>turned</b> 12:9	<b>violation</b> 20:5	<b>Zoom</b> 4:1 6:4
<b>thought</b> 15:7 17:20 18:24	<b>Twitter</b> 20:14 21:13	<b>W</b>	
<b>thousand</b> 27:14	<b>type</b> 10:8	<b>wait</b> 20:24 24:20,22,24	
<b>thousands</b> 27:18	<b>types</b> 13:1 29:8	<b>wanted</b> 8:9 26:16	
<b>threw</b> 23:6	<b>U</b>	<b>warrant</b> 9:2	
<b>tied</b> 30:5	<b>uh-huh</b> 6:3	<b>website</b> 23:2,4, 13	
<b>time</b> 4:21 5:12 8:13,15 9:10 10:22 14:16 16:20,23 17:2,3 19:5,11 21:15,19 23:3 24:13 25:12 30:15	<b>ultimately</b> 20:16	<b>weeks</b> 25:13	
<b>times</b> 6:4	<b>ums</b> 6:3	<b>weird</b> 17:2 18:13 20:11 28:21	
<b>today</b> 5:2,18,21, 23 24:17 30:12, 16	<b>un-publish</b> 25:12	<b>well-known</b> 23:24	
<b>Todd</b> 30:10,12	<b>un-published</b> 26:6,13 27:4	<b>wife</b> 15:9	
<b>Todd's</b> 5:24	<b>uncommon</b> 25:11	<b>word</b> 12:8,15 13:19 26:17 27:7 30:12	
<b>town</b> 4:21	<b>understand</b> 7:3,8,16 10:10 11:3 29:13	<b>words</b> 7:2	
	<b>understandin</b> g 7:1 10:6 11:13	<b>work</b> 6:10 7:1 15:19 23:21 28:3	
	<b>unique</b> 24:10	<b>worked</b> 7:23	
	<b>Unlike</b> 5:2		
	<b>unrelated</b> 14:15		